

AMENDMENT

THREE RIVERS SCHOOL DISTRICT

AND

SODEXO AMERICA, LLC

THIS AMENDMENT, dated April 26, 2010, is between THREE RIVERS SCHOOL DISTRICT ("SFA") and SODEXO AMERICA, LLC ("FSMC").

WITNESSETH:

WHEREAS, SFA and FSMC entered into a certain Management Agreement dated July 1, 2007, as amended ("Agreement"), whereby FSMC manages and operates SFA's Food Service operation in Grants Pass, Oregon;

WHEREAS, the parties now desire to further amend the aforesaid Agreement;

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the parties hereto agree as follows:

1. Any and all references to the "2009-2010" school year shall be changed to "2010-2011" school year.

2. Section 1.2 is deleted in its entirety and the following substituted therefor:

"1.2 Purpose of Agreement. This Agreement sets forth the terms and conditions upon which the SFA retains the FSMC to manage and operate the SFA's food service for the SFA's students, employees, visitors, and guests. The SFA has contracted the management and operations of its food service program since 2001. Given the unique expertise to perform these duties, which are outside its core mission, the SFA has determined that it does not have the required personnel or proficiency to assume these duties internally."

3. Section 1.3 is hereby deleted and the following substituted therefor:

"1.3 Term of the Agreement. The term of this Agreement commences on July 1, 2010, and continues until June 30, 2011. The Agreement is subject to one (1) additional one (1) year renewal upon the consent of both parties, unless terminated earlier as provided in Article VII, General Terms and Conditions. Extensions or renewals are contingent upon the fulfillment of all contract provisions related to donated foods."

During the first half of each school year, SFA and FSMC agree to participate in an Annual Expectations Meeting throughout the term of this Agreement in accordance with Appendix C.

FSMC shall present no less than bi-annually a verbal and written program update to the School Board.

Financial and performance guarantees are contingent on the activities described in this section being fulfilled by the parties."

4. Section 6.2 is deleted in its entirety and the following substituted therefor:

"6.2 FSMC's Fixed Meal Price for Pattern Meals and Meal Equivalents. Gross Sales shall be remitted to the SFA or deposited in the SFA's account on a daily basis. FSMC shall charge the SFA a fixed price ("Fixed Meal Price"), with commodities received deducted from the monthly invoice as required by USDA regulations, for each Pattern Meal and Meal Equivalent provided by FSMC under this Agreement as follows:

<u>Pattern Meals &amp; Meal Equivalents</u>	<u>Fixed Meal Price</u>
All Pattern Meal and Meal Equivalents	\$1.5265

- A. Meal Equivalent and Pattern Meal Defined:

For per-Meal Fee purposes, each reimbursable lunch shall be considered one (1) meal/meal equivalent, each supper meal shall be considered one (1) meal/meal equivalent, each reimbursable breakfast shall be considered one-third (1/3) of a meal/meal equivalent, and one reimbursable snack shall be considered one-fourth (1/4) of a meal/meal equivalent.

For per-Meal Fee purposes, the number of meal equivalents shall be determined by dividing the total of all food sales except reimbursable meal and snack sales (including sales of adult meals, a la carte meals, snack bar, catering, conference, and any other function sales) by \$2.60 (Total a la carte dollars divided by 2.60 equals one (1) lunch equivalent).

"Pattern Meal" shall be defined as a meal eligible for government reimbursement.

- B. Total meals served for determining the Fixed Meal Price shall be adjusted annually according to the percentage of increase or decrease in district enrollment.
- C. The FSMC shall submit the following supporting documents to the SFA monthly:
- Daily meal counts by benefit category by school for each program

- Daily menu production records by program
- Monthly summary of Value of Commodities used
- Monthly summary of Revenues from other sales

D. Crediting Value of Commodities Received by the SFA – The FSMC must credit the SFA for the value of all donated food received, entitlement and bonus, for use in the SFA's meal service in the school year. This includes the value of donated food contained in processed end products. The FSMC shall list on the invoice the value of commodities received for the period and deduct the amount of value from the total owed by SFA for the NSLP meals served. The value of commodities for entitlement and bonus is the average USDA purchase price as listed by ODE. For processed commodities it is the processing Agreement value."

5. Section 6.4 is deleted in its entirety and the following substituted therefor:

"6.4 Guarantee. The SFA and the FSMC shall work together to ensure a financially sound and well-run operation. If, during any Accounting Period, the SFA is not one hundred percent (100%) satisfied with any part of FSMC performance, upon written notice, FSMC will refund \$0.028 per Pattern Meal served for that Accounting Period as defined in Section 6.2. The food service program shall be managed so to be self supporting. The total of all direct operating costs (including costs of food, supplies, wages, benefits, maintenance and all other direct costs) must not exceed total program resources (including sales and reimbursement under federal programs). If the program experiences operating losses, the FSMC shall be required to reimburse the SFA in an amount commensurate with the variance for those costs under their control. FSMC's financial guarantee in this Agreement is based on information that was specified in the SFA's Request for Proposal. Any material changes in the information specified in the SFA's Request for Proposal shall allow for renegotiation of financial terms by the FSMC."

6. Section 6.8 is deleted in its entirety and the following substituted therefor:

"6.8 Renegotiation of Financial Terms. The renegotiation of price terms under this Agreement is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of the parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms and financial guarantee of this Agreement are based, then those price terms and financial guarantee so affected may be renegotiated by the parties. Renegotiation of price terms and the financial guarantee under such conditions must be mutual, and both parties must agree upon any changes in price terms and the financial guarantee. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Agreement. If the renegotiation exceeds twenty

percent (20%) of the original contract value, the contract must be re-bid. Renegotiation Examples are:

- Changes in SFA's policies, practices, and service requirements shall result in an appropriate adjustment;
- Legislation, regulations and reimbursement rates that create changes in the school lunch & breakfast program shall remain consistent throughout the year;
- Average Daily Membership ("ADM") for the contract year beginning July 1, 2010 shall remain at five thousand (5,000);
- Usable commodities, of adequate quality and variety required for FSMC's proposed menu cycle, valued at \$0.21 per Pattern Lunch for the 2010-2011 school year shall be consistent throughout the year;
- The government reimbursement rates in effect as of June 30, 2010 shall increase by a minimum of three percent (3%);
- Changes to meal components and quantities required by the National School Lunch Act or the National School Lunch Program;
- There shall be no competitive sales during the Lunch period;
- Service hours, service requirements, type or number of facilities selling food and/or beverages on SFA's food service facilities shall remain consistent throughout the year;
- Boys and Girls Club program revenue shall be at least One Hundred Eleven Thousand Six Hundred Twenty Eight Dollars (\$111,628) for the 2010-2011 school year.
- Meal prices for the 2010-2011 school year shall at a minimum remain as follows:

	<u>Paid</u>	<u>Reduced</u>
Elementary School Student Lunch	\$1.85	\$0.40
Middle School Student Lunch	\$2.10	\$0.40
High School Student Lunch	\$2.35	\$0.40
Student Breakfasts (non-provisional)	\$1.10	\$0.00*
Provision Lunch and Breakfast	\$0.00	\$0.00

\*as long as the state of Oregon continues to provide an additional \$0.30 cents reimbursement for reduced breakfasts, if not reduced, breakfast price shall be \$0.30.

- The actual number of full feeding days for all grade levels shall remain at:
  - Elementary Schools – 172
  - Middle School – 172

- High School – 172
  - Summer Program Service – 49
  - Vended Program Service – 172
- For purposes of the FSMC's financial guarantee, total labor cost for the Food Service operation including, but not limited to, wages, vacation, sick pay, medical/dental, retirement, general liability and workers' compensation shall not exceed One Million Fifty Four Thousand Dollars Ninety Five (\$1,054,095.00) for the 2010-2011 school year, including operation of the summer Food Service program;
- Total Indirect costs charged to the food service program shall not exceed Thirty Five Thousand Dollars (\$35,000.00) for the 2010-2011 school year. Indirect costs shall be outside of the FSMC's financial guarantee.
- Capital improvements and expenditures shall be paid outside of the food service fund direct operating costs.
- State Matching Fund Reimbursements deposited to the food service fund shall be at Least Nineteen Thousand Three Hundred and Eighty Four Dollars (\$19,384) for the 2010-2011 school year."

7. Section 7.10 is amended to reflect that the first notification address under FSMC shall read as follows:

"To FSMC: Sodexo America, LLC  
 Attention: Ted J. Monk  
 Senior Vice President, School Services  
 10300 SW Greenburg Road, Suite 271  
 Portland, Oregon 97223"

8. The following Sections are added to Article VII and incorporated into the Agreement:

"7.21 Debarment/Suspension Certificate.

- A. The foodservice management company must sign a Debarment/Suspension Certification. This certification assures the school food authority that the vendor has not been debarred from entering into contracts with the Federal government or any entity receiving Federal funds or suspended from entering into contracts during a time when the foodservice management company is being investigated for or legal action is being taken to debar the foodservice management company from contracting activities. OMB Circular 3017.
- B. The certification must be attached to the signed contract and kept on file at the school food authority. A copy of the certification must also be forwarded to the state agency with a copy of the signed contract or addendum. OMB Circular 3017. (See Appendix E)

7.22 Certificate of Independent Price Determination.

- A. All school food authorities shall require foodservice management companies to certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition.
- B. All foodservice management companies will be required to sign and submit a Certification of Independent Price Determination with each school food authority contract. The certification must be attached to the signed contract and kept on file at the school food authority. A copy of the certification must also be forwarded to the state agency with a copy of the signed contract or addendum. OMB Circular 3017. (See Appendix D)"

9. This Amendment is effective July 1, 2010 and thereafter, unless amended. All other terms and conditions contained in the Agreement shall remain unchanged and in full force and effect, except by necessary implication.

IN WITNESS WHEREOF, the duly authorized officers of the parties have executed this Amendment, as of the date indicated in the first paragraph of this Amendment.

THREE RIVERS SCHOOL DISTRICT

By: \_\_\_\_\_  
Name (printed): \_\_\_\_\_  
Title: \_\_\_\_\_

SODEXO AMERICA, LLC

By:

  
Ted J. Monk  
Senior Vice President, School Services

5-4-10



Appendix B

U. S. DEPARTMENT OF AGRICULTURE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, Title 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Sodexo Operations, LLC.

Organization Name

PR/Award Number or Project Name

Ted J. Monk, Senior Vice President

Names(s) and Title(s) of Authorized Representative(s)

Signature(s)

5-4-10  
Date



## Appendix C

### CLEAN AIR AND WATER CERTIFICATE

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act 33 1319(d) and is listed by EPA or the contract is not otherwise exempt. Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate.

Sodexo Operations, LLC.

Three Rivers S.D.

NAME OF FOOD SERVICE MANAGEMENT COMPANY

NAME OF SCHOOL FOOD AUTHORITY

#### THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:

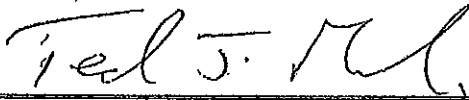
- A. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- B. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- C. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
- D. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

#### THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

- A. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).
- B. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- C. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
- D. The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

Appendix C

- E. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
- F. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the Food Service Management Company.

	Senior Vice President	5-4-10
SIGNATURE OF FOOD SERVICE MANAGEMENT COMPANY'S AUTHORIZED REPRESENTATIVE	TITLE	DATE

SIGNATURE OF SCHOOL FOOD AUTHORITY'S AUTHORIZED REPRESENTATIVE	TITLE	DATE
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Appendix D

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Sodexo Operations, LLC.

10300 SW Greenburg Road

Suite 271

Portland, OR 97223

Name/Address of Organization

Ted J. Monk, Senior Vice President

Name/Title of Submitting Official



Signature

5-4-10

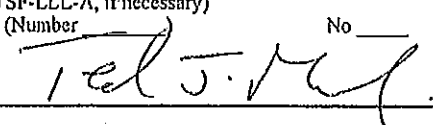
Date

# Appendix D

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

<p><b>1. Type of Federal Action:</b> <u>A</u></p> <p>a. contract  b. grant  c. cooperative agreement  d. loan  e. loan guarantee  f. loan insurance</p>	<p><b>2. Status of Federal Action:</b> <u>A/B</u></p> <p>a. bid/offer/application  b. initial award  c. post-award</p>	<p><b>3. Report Type:</b> <u>A</u></p> <p>a. initial filing  b. material change</p> <p>For Material Change Only: Year _____  Quarter _____ Date of Last Report _____</p>
<p><b>4. Name and Address of Reporting Entity:</b>  Sodexo Operations, LLC, on behalf of itself and all its subsidiaries  9801 Washingtonian Blvd.  Gaithersburg, Maryland 20878  <input checked="" type="checkbox"/> Prime      <input type="checkbox"/> Subawardee  <input type="checkbox"/> Tier, if known:  Congressional District, if known: <u>N/A</u></p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   Congressional District, if known: <u>N/A</u></p>	
<p><b>6. Federal Department/Agency:</b>  U.S. Congress  Department of Defense  USDA</p>	<p><b>7. Federal Program Name/Description:</b>   CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b>  Unknown</p>	<p><b>9. Award Amount, if known:</b>  \$ Unknown</p>	
<p><b>10a. Name and Address of Lobbying Entity:</b>  (if individual, last name, first name, middle)  Sodexo Operations, LLC, on behalf of itself and all its subsidiaries.  9801 Washingtonian Blvd.  Gaithersburg, Maryland 20878</p>	<p><b>10b. Individuals Performing Services (including address if different from No. 10,a.)</b>  (last name, first name, middle)   Gilliam, Reginald  Nam, Frances</p>	
<p>(Attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		
<p><b>11. Amount of Payment (check all that apply):</b>  <input type="checkbox"/> Actual    <input type="checkbox"/> Planned</p>	<p><b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service,</b>  including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11:   General Federal issues and procurement matters.</p>	
<p><b>12. Form of Payment (check all that apply):</b>  <input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: Nature _____  Actual _____</p>	<p><b>13. Type of payment (check all that apply):</b>  <input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input checked="" type="checkbox"/> f. other; specify: <u>In House Government Affairs Department</u></p>	
<p>(Attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		
<p><b>15. Are Continuation Sheet(s) SF-LLL-A Attached:</b>      Yes _____ (Number _____)      No _____</p>	<p><b>16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>	
	<p>Signature: <u></u></p> <p>Print Name: <u>Ted J. Monk</u></p> <p>Title: <u>Senior Vice President</u></p> <p>Telephone: <u>503-290-2056</u></p> <p>Date: <u>5-4-10</u></p>	
<p><b>Federal Use Only:</b></p>	<p>Authorized for Local Reproduction Standard Form -- LLL</p>	

Appendix D  
DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET SF-LLL-A

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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## Appendix E

United States Department of Agriculture  
Food and Nutrition Service

Western Region

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Reply to  
Attn of: SP Policy Memo 02-12      April 4, 2002      SA-11; SA-9-1-GEN

Subject: Buy American Provision

To: State Child Nutrition Program Directors

This policy memo reinforces a memo on the "Buy American" provision our Child Nutrition Division sent to State agencies on January 9, 2002.

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and SBP.

The legislation defines "domestic commodity or product" as one that is produced and processed in the United States substantially using agricultural commodities that are produced in the United States. The report accompanying the legislation stipulated that "substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

USDA published regulations implementing these requirements on September 20, 1999, in the *Federal Register*. Nevertheless, the domestic food industry continues to express concerns that local program operators continue to use program funds to purchase foreign agricultural products. In response to this concern, report language accompanying the Agriculture Appropriations Act for Federal Fiscal Year 2002 requires USDA to report to Congress on its activities directed toward enforcing the Buy American provision.

Given the importance that Congress attaches to the "Buy American" provision and the role this provision plays in helping to stabilize the American agricultural economy, it is essential that local operators understand the need to ensure that all purchases of agricultural commodities and food products comply with this statutory provision. In addition to including the "Buy American" provision in bid specifications to ensure compliance, local operators should remind vendors and distributors of the requirement, and examine product packaging for country of origin.

Local operators must also be aware that, as a result of explicit language also contained in the report noted above, this provision now applies to all funds in the food service account and not just to Federal reimbursement. Please ensure that all local operators are aware of their responsibilities in this respect.

If you have any questions regarding this policy memo, please contact your team in Child Nutrition.

**Janet Allen**

JANET ALLEN, Director  
Special Nutrition Programs  
Western Region

cc: WRO Advocates